

Appl. No. 09/805,652
Amd. dated April 10, 2009
Reply to Office Action of November 10, 2008

REMARKS

**Reconsideration And Allowance
Are Respectfully Requested.**

Claims 1-7, 16, 17, 22-24, 31, 33, 34 and 111-121 are currently pending. Claims 1-4, 7, 22-24, 31 and 33 have been amended. Claims 8-15, 18-21, 25-30, 32 and 35-110 have been canceled. New claims 111-121 have been added. No new matter has been added.

Claim 1 stands rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claims 61 and 102 of U.S. Patent No. 6,371,904. Claim 1 stands provisionally rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claim 110 of co-pending Application Serial No. 10/114,712. Claim 1 stands provisionally rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claim 38 of co-pending Application Serial No. 10/960,618. Claim 1 stands provisionally rejected on the ground of nonstatutory obvious-type double patenting as being unpatentable over claims 109, 128, 152 and 177 of co-pending Serial No. 10/960,622. Claims 11-13, 26 and 10 are objected to because of various informalities. Claims 1-16, 18-26, 29-31, 33, 34, 109 and 110 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,340,367 Stinson et al. (Stinson). Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Stinson as applied to claim 1, and further in view of U.S. Patent No. 6,666,811 to Good. These rejections are respectfully traversed in view of the preceding amendments and the remarks which follow.

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The objections to claims 11-13, 26 and 110 are deemed moot as these claims have been canceled. As such, Applicants respectfully request these objections to be withdrawn.

All of the outstanding rejections are based upon Stinson. These rejections are believed to be overcome by the current amendments to the claims. Stinson teaches an endoprosthesis or stent with a marker attached thereto. The endoprosthesis or stent of Stinson is used for visualizing the passage and placement of the stent in arteries and body lumens. In contrast, Applicants have claimed bodies wherein the sole function of the two implantable bodies is to mark a cavity resulting from a biopsy in breast tissue. There is no logical reason why one would insert a stent into a breast to mark a biopsy cavity. In addition, nothing in the cited references remedies this deficiency of Stinson

In addition to Stinson's failure as discussed above, Stinson fails to disclose or teach one marker body disposed within another and one body being formed from a non-bioabsorbable marker material. In addition, nothing in the cited references remedies this deficiency of Stinson

With the foregoing in mind, it is Applicants' opinion the rejections based on Stinson have been overcome and Applicants respectfully request the rejections be withdrawn. It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested.

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With regard to the various provisional double patenting rejections, claim 1 has been substantially amended and is believed to be patentably distinct from the cited patent and patent applications. As such, these rejections are believed to be overcome and Applicant respectfully requests that these provisional double patenting rejections be withdrawn.

If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact applicants' representative at the below number.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'H. N. Flaxman', with a long horizontal flourish extending to the right.

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